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Valentin Bajuk

Aktualna problematika obdavčitve dobička iz kapitala fizičnih oseb

Open issues of capital gain tax for natural persons

POVZETEK • Obdavčitev dobička iz kapitala je odvisna od več medsebojno povezanih vsebinskih sklopov, ki poleg poznavanja davčnih predpisov zahtevajo tudi dobro poznavanje drugih pravnih področij, predvsem s področja prava družb. V tem prispevku so analizirane in predstavljene možne razlage nekaterih v praksi aktualnih vprašanj s področja obdavčitve dobička iz kapitala fizičnih oseb, kot so: (a) vpliv povečanja osnovnega kapitala d.o.o.-ja iz sredstev družbe na čas pridobitve kapitala; (b) način porazdelite prodajne vrednosti kapitala na posamezne poslovne deleže; (c) obdavčitev variabilnega dela kupnine od odsvojitve kapitala; (d) vračilo preveč plačanega davka iz poslov odkupa lastnih poslovnih deležev.

Ključne besede • dohodnina, dobiček iz kapitala, čas pridobitve kapitala, povečanje kapitala iz sredstev družbe, davčna osnova, prodaja istovrstnega kapitala, variabilna kupnina

SUMMARY • The taxation of capital gains depends on several interrelated substantive elements, which, in addition to expertise in tax law, also require a good knowledge of other legal areas, especially in the field of company law. In this paper, we analyse and present possible outcomes of some current issues in the field of taxation of capital gains of natural persons, such as: (a) the impact of the share capital increase of a limited liability company from the company's assets on the time of capital acquisition; (b) the method of distributing the sales value of the capital to individual business shares; (c) taxation of the variable part of the purchase price from the disposal of capital; (d) refund of overpaid tax from the purchase of own business shares.

Key words • income tax, profit from capital, time of acquisition of capital, increase of capital from the company's assets, tax base, sale of the same type of capital, variable purchase price

Danuška Bobek Gospodarič

Izzivi določanja transfernih cen in dokumentacije za obdobji covid-19 in ukrajinske krize

Transfer pricing and documentation challenges for covid-19 and Ukrainian crisis

POVZETEK • Od začetka leta 2020 dalje se srečujemo z izrednimi razmerami, ki sta jih povzročila pandemija covid-19 in napad Rusije na Ukrajino. Zaradi posledic pandemije smo bili soočeni z doslej največjo svetovno zdravstveno, gospodarsko, socialno in humanitarno krizo, ki je ustvarila ozka grla in motnje v mednarodni trgovini, kakršnih še ni bilo. Le dve leti kasneje je ukrajinska kriza močno vplivala na cene energentov ter povzroča težave z dobavo surovin in materialov. Sprejete sankcije proti Rusiji so še dodatno prizadele panoge, ki so najbolj vpete v trgovinsko menjavo z Ukrajino in Rusijo. Zaradi pomembne vloge, ki jo imajo v svetovni trgovini mednarodna podjetja, so se tudi na področju transfernih cen pojavila številna vprašanja, kako ravnati ob edinstvenih okoliščinah, ki sta jih ustvarili pandemija covid-19 in vojna v Ukrajini.

Ključne besede • transferne cene, analiza primerljivosti, dokumentacija o transfernih cenah, vnaprejšnji cenovni sporazumi, izredne razmere, covid-19, ukrajinska kriza

SUMMARY • Since the beginning of 2020, we are facing emergency situations caused by the COVID-19 pandemic and Russia's attack on Ukraine. Due to the consequences of the pandemic, we were faced with the largest global health, economic, social and humanitarian crisis to date, which created bottlenecks and disruptions in international trade that had never been seen before. Only two years later, the Ukrainian crisis had a strong impact on the prices of energy products, caused problems with the supply of raw materials, components and other products. The adopted sanctions against Russia further affected the industries most involved in trade with Ukraine and Russia. Due to the important role that international companies play in world trade, many questions have arisen in the field of transfer pricing as well, such as how to deal with the unique circumstances created by the COVID pandemic and the war in Ukraine.

Key words • transfer pricing, comparability analysis, transfer pricing documentation, advance pricing agreement, covid-19, Ukrainian crisis

Mag. Joži Češnovar

Upravni spor na področju davkov – v vlogi odvetnika in sodnika

Administrative dispute in the field of taxes – in the role of lawyer and judge

POVZETEK • Kot nekdanji davčni svetovalki in odvetnici, specializirani za davčno pravo, zdaj pa višji sodnici na oddelku za javne finance Upravnega sodišča Republike Slovenije je bil naslov prispevka izbran z namenom predstaviti naloge pooblaščenca in sodnika v upravnem sporu na področju davkov in ob tem podati tudi svoja opažanja glede obeh vlog. V prispevku izhajam iz zakonske ureditve davčnega postopka in upravnega spora, kot izhaja iz Zakona o davčnem postopku, Zakona o upravnem sporu v povezavi z Zakonom o pravdnem postopku, pa tudi iz sodne prakse zlasti Vrhovnega sodišča Republike Slovenije. Poleg tega neizbežno črпам še iz lastnih izkušenj in doživljanja, ki pa se lahko razlikuje od kolegov. Menim, da kljub zakonski urejenosti davčnega postopka, ki je specialni upravni postopek, in postopka upravnega spora na potek konkretnega postopka vplivajo vse vpletene osebe s svojim celotnim vložkom v zadevo, s svojim znanjem, izkušnjami, osebnim pristopom in angažiranostjo. Zato je izid postopka v določeni meri vedno odvisen tudi od oseb, ki sodelujejo v zadevi, torej od pooblaščenca osebe davčnega organa, zavezanca za davek in njegovega pooblaščenca ter od sodnika oziroma senata treh sodnikov. Bolj ko ti poznajo svoj del nalog in odgovornosti, večja je verjetnost, da bo končni izid pravilna in zakonita, s tem pa tudi pravična odmera davka.

Ključne besede • upravni spor na davčnem področju, davčni postopek, pooblaščenec, glavna obravnava, materialno procesno vodstvo

SUMMARY • As a former tax consultant and lawyer specializing in tax law, but now a senior judge in the public finance department of the Administrative Court of the Republic of Slovenia, I was chosen to prepare this paper with the aim of presenting the tasks of the attorney and the judge in administrative disputes in the field of taxes and giving my observations regarding both roles. In my contribution, I proceed from the legal regulation of tax procedure and administrative dispute, as derived from the Tax Procedure Act, the Administrative Dispute Act in connection with the Civil Procedure Act, as well as from judicial practice, especially of the Supreme Court of the Republic of Slovenia. In addition, I inevitably draw on my own experiences and perceptions, which may differ from those of my colleagues. I believe that despite the legal regulation of the tax procedure, which is a special administrative procedure, and the administrative dispute procedure, the course of the specific procedure is influenced by all the persons involved, with their entire

contribution to the matter, with their knowledge, experience, personal approach and engagement. Therefore, the outcome of the procedure will always depend to a certain extent on the persons participating in the case, i.e. on the authorized person of the tax authority, the taxpayer and his attorney, and on the judge or the panel of three judges. The better they know their part of duties, powers and responsibilities, the more likely it is that the end-result will be correct and legal, thus also resulting in a fair assessment of the tax.

Key words • *administrative dispute in the field of taxes, tax procedure, attorney-in-fact, main hearing, direction in substance of the course of proceedings*

Mag. Rosana Dražnik

Pasti pri izračunu odbitnega deleža in novosti po PZDDV-ju

Pitfalls in calculating the deductible proportion of VAT, and novelties in the Rules to the VAT Act

POVZETEK • Davčni zavezanci, ki opravljajo oproščeno ali neobdavčljivo dejavnost, se v praksi pogosto vprašajo, kako pravilno določiti odbitni delež, torej delež DDV-ja, ki se lahko odbija. Formula z upoštevanjem prometa na ravni družbe, podana v Zakonu o davku na dodano vrednost, je po navadi najenostavnejša rešitev in tudi največkrat uporabljena v praksi. Vendar pa glede na naravo dejavnosti ni uporabna za vse. Poleti 2022 je bila sprejeta novela Pravilnika o izvajanju Zakona o davku na dodano vrednost, s katero se v določenem delu spreminja izračun odbitka DDV-ja oziroma popravka odbitka DDV-ja pri osnovnih sredstvih, ki se uporabljajo za oproščeno in obdavčeno dejavnost oziroma kjer se spreminja namembnost uporabe. V prispevku so predstavljene najpomembnejše novosti s primeri, kako in kdaj izvesti popravek odbitka DDV-ja.

Ključne besede • DDV, odbitek DDV-ja, odbitni delež, popravek odbitka DDV-ja za osnovna sredstva

SUMMARY • Taxable persons performing exempted and non-taxable activities are often faced with the challenge of how to calculate the percentage of the proportional deduction of VAT. A calculation based on the turnover, defined in the Slovenian VAT Act is in many cases the easiest and most often used in practice. But it is not always the most practical solution or even the most appropriate one. In the summer of 2022, a novel on the Rules on the Implementation of the VAT Act was adopted. It changes the method of calculating the deduction of the VAT or better to say the definition of periods for the adjustment of VAT in case of a change in circumstances important for the deduction of VAT for the capital goods used for activities with a right to deduct and activities without a right to deduct VAT. We will introduce the main novelties and state when and how to adjust the VAT in the case of a change of activities.

Key words • VAT, VAT deduction, proportional deduction, adjustment of deduction for capital goods

Jure Mercina

Zahtevki za vračilo davka iz prekvalifikacij kapitalskih dobičkov v dividende

Tax refund claims deriving from requalification of capital gains into dividend income

POVZETEK • Na podlagi odločitve Vrhovnega sodišča RS, da izplačila kupnine za nakup lastnih poslovnih deležev v družbi z omejeno odgovornostjo ni mogoče samega po sebi šteti za nedovoljeno davčno izogibanje, se je pojavilo vprašanje, kako naj ravnajo zavezanci za davek, ki so v preteklosti plačali dodaten davek na podlagi drugačnega stališča FURS-a. Osnovno pravno načelo pravičnosti je, da mora biti zavezancem za davek v tem primeru neupravičeno plačan davek vrnjen, vendar pa podrobnejša analiza pokaže, da so možnosti za vračilo omejene.

Ključne besede • dohodnina, nakup lastnega poslovnega deleža, vračilo preveč plačane davka, odprava odločbe po nadzorstveni pravici, zamudne obresti

SUMMARY • Following the Supreme Court decision that acquisition of own business shares by a limited liability company from a shareholder cannot be automatically considered as tax avoidance, the question arose of how taxpayers that had paid additional income tax on the basis of the previous different position of the Financial Administration shall react. The basic legal principle of justice instructs that taxpayers shall be entitled to refund of the tax that has been paid unjustified; however, a deeper analysis of procedural rules shows that actual possibilities for refund are limited.

Key words • personal income tax, acquisition of own business share, tax refund, extraordinary legal remedies, late payment interest

Blaž Pate

Postopek skupnega dogovarjanja – MAP

Mutual agreement procedure – MAP

POVZETEK • Postopek skupnega dogovarjanja (MAP) je instrument mednarodnega prava za reševanje mednarodnih davčnih sporov, predvsem za zagotavljanje enotnega izvajanja mednarodnih pogodb o izogibanju dvojnega obdavčevanja in za odpravljanje dvojne obdavčitve. MAP izvajajo pristojni organi zadevnih držav, sproži pa se lahko na podlagi Konvencije o izogibanju dvojnega obdavčevanja dohodka in premoženja ali na podlagi Konvencije o izogibanju dvojnega obdavčevanja v zvezi s preračunom dobička povezanih podjetij. MAP se lahko začne tudi na zahtevo davčnega zavezanca, ki jo ta praviloma vloži v državi, katere rezident je, in sicer takrat, kadar meni, da so ali bodo odločitve oziroma dejanja davčnega organa ali davčnega organa druge države povzročile obdavčenje, ki ni v skladu z mednarodno pogodbo. Zahtevo za MAP pa lahko vloži ne glede na morebiti vložena domača pravna sredstva, tudi če še niso izčrpana. V skladu s slovenskim pravnim redom MAP ni več mogoč, če je glede vprašanja obdavčitve v upravnem sporu že izdana pravnomočna sodba. Upoštevaajoč dolgotrajne domače pritožbene in tožbene postopke je MAP v praksi za davčne zavezance pogosto hitrejša pot do rešitve mednarodnega davčnega spora, pri dvojni obdavčitvi pa pogosto edina pot do njene popolne odprave.

Ključne besede • postopek skupnega dogovarjanja (MAP), konvencije o izogibanju dvojnega obdavčevanja, Arbitražna konvencija, mednarodni davčni spor, dvojna obdavčitev

SUMMARY • Mutual agreement procedure (MAP) is an instrument of international law for the resolution of international tax disputes, primarily to ensure the uniform implementation of double tax treaties and for elimination of double taxation. MAP is carried out by the competent authorities of the countries concerned. It may be initiated on the basis of a Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital or based on the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises. MAP may be initiated also at a request of a taxpayer, who considers that the actions of one or both contracting states result or will result for him in taxation not in accordance with the provisions of a Convention. Such a request shall be filed in the country of residency of this taxpayer, regardless of any domestic legal remedies that may have been filed, even if they have not yet been exhausted. In accordance with the Slovenian legislation, MAP is no longer

possible if a final judgment regarding the issue of taxation has already been issued in an administrative dispute. Taking into account the lengthy domestic appeal and lawsuit procedures, MAP in practice often represents a faster way for taxpayers to resolve an international tax dispute, and in the case of double taxation, it is often the only way to its complete elimination.

Key words • *Mutual Agreement Procedure (MAP), Double Tax Treaties, Arbitration Convention, international tax dispute, double taxation*

Dr. Saša Prelič

Korporacijskoppravne in premoženjske posledice datuma obračuna združitve ali delitve

Legal consequences of the balance sheet date in case of mergers and divisions

POVZETEK • V prispevku obravnavamo korporacijskopravno učinkovanje opredelitve datuma zaključnega poročila prevzete oziroma prenosne družbe pri združitvah in delitvah gospodarskih družb. Pri tem ugotavljamo, da ta opredelitev na povzroča neposrednih pravnih posledic glede pripadnosti pravic, obveznosti in pravnih razmerij, ampak te nastopijo šele z vpisom združitve oziroma delitve v sodni register.

Ključne besede • dan obračuna združitve ali delitve, zaključno poročilo, univerzalno pravno nasledstvo, statusno preoblikovanje, združitve, delitev

SUMMARY • The author deals with legal consequences occurring from the determination of the balance sheet date in connection with mergers and divisions of companies. It is stated that the determination of that date does not cause any direct consequences regarding the belonging of assets, obligations and legal relationships. They only come into effect when the merger or division has been entered into court register.

Key words • balance sheet date of merger or division, final report, universal legal succession, company combinations, merger, division

Sara I. James

Reporting before, during and after (?) Covid

Poročanje v predkovidnem, kovidnem in pokovidnem obdobju

SUMMARY • *Internal audit communication has evolved greatly over the past few years. This paper presents some insights and advice about internal audit reporting during what we can call the Covid-19 era. As organisations across the world changed their ways of working, the importance of effective communication became even clearer. Internal auditors in any sector or context can benefit from improving relationships, using plain language, and exploring new media.*

Key words • *internal audit, communication, reporting, report, change, Covid-19.*

POVZETEK • *Komuniciranje notranje revizije se je v zadnjih nekaj letih zelo razvilo. V članku je predstavljeno nekaj spoznanj in nasvetov v zvezi z notranjerevizijskim poročanjem v času, ki ga lahko imenujemo kar kovidna doba. Ker so organizacije po vsem svetu spremenile način dela, je postal pomen učinkovite komunikacije še očitnejši. V vsakem sektorju in ob kakršnem koli delu lahko notranji revizorji izkoristijo boljše medsebojne odnose, uporabo jasno razumljivega jezika in proučevanje novih medijev.*

Ključne besede • *notranja revizija, komunikacija, poročanje, poročilo, sprememba, covid-19*

Dr. Aljoša Valentinčič, Katarina Sitar Šuštar

Koncepti vrednosti, cene in kapital-skega trga v luči globalne finančne krize

Concepts of value, price and capital market in light of the global financial crisis

POVZETEK • V prispevku prikažemo opredelitve temeljnih pojmov, povezanih s kapital-skim trgom (likvidnost, aktivnost in učinkovitost), vrednostjo in ceno. Analiziramo delovanje kapitalskih trgov v Sloveniji in tujini med globalno finančno krizo ter izpostavimo razloge, ki so vplivali na drugačen odziv slovenskega kapitalskega trga na krizo, kot ga lahko opazujemo na tujih kapitalskih trgih in kot smo ga bili na slovenskem kapitalskem trgu vajeni pred globalno finančno krizo. Nadalje razpravljamo o uporabi vrednosti računovodskih informacij med krizo. Globalna finančna kriza je razgalila pomanjkljivosti opredelitev in zahtev, ki so jih vključevali standardi (računovodski, ocenjevanja vrednosti) in regulatorne zahteve. Ker na vrsto vprašanj, s katerimi so se srečevali razni udeleženci kapitalskih trgov, niso imeli odgovorov ne standardi ne regulativa, je globalna finančna kriza povzročila obsežne spremembe na teh področjih. V prispevku prikažemo spremembe v opredelitvah nekaterih ključnih kategorij (v MSOV-jih npr. opredelitev vrednosti, trga, tržne in poštene vrednosti) ter opredelitev novih kategorij (npr. pravična vrednost). Ob koncu predstavimo vlogo in delovanje finančnih analitikov na trgu kapitala ter povzamemo ključne ugotovitve analize.

Ključne besede • globalna finančna kriza, finančni trgi, vrednost, poštena vrednost, računovodsko poročanje, standardi

SUMMARY • In this paper, we present the definitions of the fundamental concepts related to capital market (liquidity, activity and efficiency), value and price. We analyze the functioning of capital markets in Slovenia and abroad during the global financial crisis and point out the reasons that influenced the different response of the Slovenian capital market to the crisis compared to that we can observe in foreign capital markets and as we were used to in the Slovenian capital market before the global financial crisis. We further discuss the practical value of accounting information during a crisis. The global financial crisis exposed the shortcomings of definitions and requirements included in the standards (accounting, valuation) and regulatory requirements. Since neither standards nor regulations provided answers to a range of questions faced by various participants in the capital markets, the global financial crisis brought about extensive changes in these areas. In

the paper, we show changes in the definitions of some key categories (e.g. definition of value, market, market value and fair value in the IVS,) and the definition of new categories (e.g. fair value). In conclusion, we present the role and performance of financial analysts in the capital market and summarize the key findings of the analysis.

Key words • global financial crisis, financial markets, value, fair value, financial reporting, standards