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Alenka Dolinšek

Novejša sodna praksa Upravnega sodišča RS o davčnih zlorabah

Recent Administrative Court case law on tax avoidance

POVZETEK • V zadnjih letih je bilo v sodni praksi sprejetih kar nekaj novih stališč glede nedovoljenega davčnega izogibanja. Ustavnosodna praksa je tako v nekaj letih naredila ogromen preskok, čemur je sledilo tudi Upravno sodišče RS. Boj proti davčnim zlorabam je bil v sodni praksi Upravnega sodišča že prej prepoznan kot eden od pomembnih ciljev, vendar iz starejše sodne prakse ni bilo mogoče vedno povsem jasno razbrati ločnice med dovoljeno davčno optimizacijo in nedovoljenim davčnim izogibanjem oziroma davčno zlorabo, pri kateri je meja dopustnega ravnanja zavezanca za davek presežena. Novejša stališča se osredotočajo prav na iskanje omenjene ločnice, ki pa je, kot je razvidno iz predstavljenih primerov, vedno odvisna od okoliščin posameznega primera. V članku so predstavljeni najbolj tipični primeri, ki so bili predmet presoje v upravnem sporu. Davčni organ v postopku nadzora dokazuje obstoj zlorabe, torej obstoj umetne sheme, katere namen je pridobitev nedovoljene davčne koristi. Nasprotno pa zavezanec za davek dokazuje, da so ga k točno taki izvedbi pravnih poslov primarno vodili drugi, tj. poslovni oziroma ekonomski razlogi, in da so posledično davčni razlogi lahko zgolj drugotnega pomena.

Ključne besede • nedovoljeno davčno izogibanje, davčna optimizacija, umetna shema, davčna ugodnost, zmanjšanje davčne obveznosti, dokazno breme

SUMMARY • In recent years, a number of new judgements have been adopted in the area of tax avoidance. The case law has thus taken a giant leap forward and the Administrative Court has followed the steps. The fight against tax evasion has always been recognised as an important objective in our jurisprudence, but earlier case law was not always clear when searching for the fine line between tax planning, which is allowed, and tax avoidance or tax abuse, which is impermissible due to existence of an arrangement intended to obtain improper entitlement to a tax benefit. More recent positions focus primarily on finding this dividing line which, as will be seen from the cases presented in this article, always depends on the circumstances of every individual case. The most typical cases that have been subject of administrative litigation are presented below. Thus, the tax authority has the task of establishing the existence of elements constituting an abusive practice i. e. artificial arrangement while taking into account all relevant factors, while on the other hand, the taxable person proves that his transactions were primarily

motivated by other, i.e. business or economic reasons and that, consequently, the tax considerations may only be of secondary importance.

Key words • *tax avoidance, tax planning, artificial arrangement, tax benefit, reduction of tax liability, burden of proof*

mag. Rosana Dražnik

Novosti v ZDDV-1 od 1. januarja 2025 dalje, s poudarkom na novi ureditvi za skupino za DDV

*Novelties in the Value Added Tax Act (ZDDV-1) as of January 1, 2025,
with a focus on the new arrangement for VAT groups*

POVZETEK • Leta 2025 se bodo začele uporabljati določene spremembe ZDDV-1, ki so bile v Državnem zboru RS sprejete 28. novembra 2024 in objavljene 10. decembra 2024 v Uradnem listu RS, št. 104. Ureditev za male davčne zavezance, ki poslujejo v več državah članicah, se spreminja zaradi sprememb Direktive 2006/112/ES, večina drugih sprememb pa je posledica odločitev slovenskega zakonodajalca, da se spremenijo stopnje DDV-ja za določene izdelke, omejitev možnosti prenosa presežka DDV-ja in drugo. Najobsežnejša sprememba, ki bo neposredno pomembna za vse davčne zavezance in se bo začela uporabljati 1. julija 2025, se nanaša na obvezno posredovanje davčnih evidenc davčnemu organu. Velika novost bo za marsikoga tudi uvedba skupine za DDV v slovensko zakonodajo o DDV-ju. Ta ureditev je znotraj EU-ja izbirna, a jo uporablja že večina držav članic, 1. januarja 2026 pa se bo začela uporabljati tudi v Sloveniji. Čeprav gre na prvi pogled za enostavno ureditev, je v praksi precej kompleksna. Razumevanje delovanja skupin za DDV je pomembno tako za zavezance, ki bodo del take skupine, kot za vse, ki bodo s tako skupino poslovali.

Ključne besede • novosti DDV zakonodaje 2025, elektronske evidence, stopnje DDV-ja, skupine za DDV, prenos davčne obveznosti, čezmejna ureditev za male zavezance

SUMMARY • In 2025, certain amendments to the Slovenian Value Added Tax Act (ZDDV-1) will begin to apply. The amendments to the ZDDV-1 were adopted by Slovenian Parliament on November 28th 2024, and published in the Official Gazette Nr 104, on December 12th 2024. Changes for small undertakings operating in different Member States are implemented due to the amendments to Directive 2006/112/EC, while most other changes result from the Slovenian legislator's decisions to adjust VAT rates for specific products, limit the ability to carry forward VAT surpluses, and more. The most substantial amendment, which will be directly significant for all taxable persons and will take effect on July 1, 2025, concerns the mandatory submission of tax records to the tax authority. For many companies, a big novelty will also be the introduction of VAT groups into the Slovenian VAT law. Within the EU, this arrangement is now optional but already used by most EU Member States and will be introduced in Slovenia as of January 1, 2026. Although this

arrangement might seem simple at first glance, it is quite complex in practice, and understanding how VAT groups operate is important not only for those who will be part of such a group but also for those conducting business with such a group.

Key words • *Novelties of VAT legislation for 2025, electronic submission of tax records, VAT rates, VAT groups, carry forward of VAT surplus, crossborder scheme for small entrepreneurs*

Blaž Pate

Zastaranje v davčnem postopku

Limitation period in tax procedure

POVZETEK • Institut zastaranja je namenjen zagotovitvi pravne varnosti in pravne predvidljivosti za davčnega zavezanca, ob vračilu preveč plačanega davka pa tudi za davčni organ. Zastaranje v davčnem pravu pomeni prekluzijo (ugasnitev) davčne obveznosti davčnega zavezanca in tudi njegove pravice zahtevati vračilo preveč plačanega davka. Poleg tega še pomeni, da davčni organ nima več pristojnosti odmeriti, izterjati ali vrniti davek. Novela Zakona o davčnem postopku prinaša poenotenje relativnega zastaralnega roka za vse davke (izjema ostaja davek na nenapovedane dohodke). Pomembna je razlika med pravnimi posledicami, ki jih povzročita pretrganje in zadržanje zastaranja: zadržanje zastaranja podaljšuje absolutni zastaralni rok, pretrganje pa nanj ne vpliva. Ob koncu izpostavljamo predvsem vprašanje začetka teka zastaralnega roka za odmero davčnega odtegljaja od prikritih izplačil dobička, ki je v praksi pogost spor med davčnimi zavezanci in davčnim organom.

Ključne besede • zastaranje, relativni zastaralni rok, absolutni zastaralni rok, začetek teka relativnega zastaralnega roka davčnega odtegljaja od prikritega izplačila dobička, upravni spor in zastaranje davčne obveznosti

SUMMARY • The statute of limitations is intended to ensure legal certainty and legal predictability for the taxpayer and, in the case of a refund of overpaid tax, for the tax authority. In tax law, the limitation period means the extinguishment of the taxpayer's tax liability and of his right to claim repayment of tax overpaid. On the other hand, it means that the tax authority no longer has the power to assess, recover or refund the tax. The amendment to the Tax Procedure Act unifies the relative limitation period for all taxes (except for the tax on unreported income). It is important to understand the difference between the legal consequences of interrupting and suspending the limitation period (suspending the limitation period extends the absolute limitation period, while interrupting it has no effect on it). Finally, we highlight the issue of the start of the limitation period for the assessment of withholding tax on hidden profit distribution, which in practice is often a dispute between taxpayers and the tax authorities.

Key words • limitation period, relative limitation period, absolute limitation period, start of relative limitation period for withholding tax on hidden profit distribution, administrative dispute and limitation of tax liability

dr. Robert Horvat

Posebnosti računovodenja prihodkov iz pogodb s kupci v dejavnosti prodaje na drobno

dr. Robert Horvat

POVZETEK • V prispevku predstavljamo računovodske rešitve za nekatere najpogostejše primere odlaganja prihodkov iz pogodb s kupci v dejavnosti trgovine na drobno, in sicer: (1) prodaja blaga s podelitvijo kupona za brezplačno pridobitev dodatnega blaga, (2) prodaja blaga s podelitvijo kupona z ugodnostmi v obliki popustov ali dobroimetij, ki jih kupec lahko (u)porabi pri svojih prihodnjih nakupih, (3) prodaja blaga s podelitvijo dobroimetja (točk zvestobe) na kartico zvestobe, (4) prodaja darilnih kartic/bonov in (5) prodaja blaga z možnostjo vračila.

Ključne besede • prihodki, popusti, prodaja na drobno, SRS 15

SUMMARY • In this paper accounting solutions are presented for the most common examples of deferred revenue from contracts with customers, namely: (1) sales with the coupon for free additional goods, (2) sales with the coupon for discount or credit that can be used for future purchases, (3) sales with awarded loyalty points or loyalty card credit, (4) sales of gift cards and (5) sales with the right of return.

Key words • revenue, discounts, retail, SAS 15

Tatjana Jevševar

Posebnosti ekonomike, računovodenja in poročanja javnih zdravstvenih zavodov (2. del)

Peculiarities of economics, accounting and reporting of public health institutions (Part II)

POVZETEK • Po Zakonu o javnih financah in Zakonu o nujnih ukrepih za zagotovitev stabilnosti zdravstvenega sistema ter po določilih 30.a člena Zakona o zdravstveni dejavnosti so javni zdravstveni zavodi, katerih ustanoviteljica je država, obvezani zagotavljati notranje revidiranje in revidiranje računovodskih izkazov. Pri izvajanju teh revizij in še posebej v okviru revizij računovodskih izkazov, ki so za revizijske družbe in javne zdravstvene zavode novost, so bila izpostavljena številna vprašanja glede posebnosti pri poslovanju in računovodenju v javnih zdravstvenih zavodih, saj je način delovanja in financiranja javnih zdravstvenih zavodov pomembno drugačen kot pri drugih javnih zavodih javnega sektorja v Sloveniji. Zato so v članku pojasnjene posebnosti ekonomike v zdravstvu, poleg tega pa še sistema financiranja in s tem računovodenja v javnih zdravstvenih zavodih.

Ključne besede • ekonomika, računovodstvo, javni zdravstveni zavodi, zdravstvena ekonomika, mikroekonomija, makroekonomija, zdravstvene storitve, financiranje, javna služba, tržna dejavnost, nadzor, finančno poslovanje, investicije, amortizacija, notranja revizija, zakonodaja

SUMMARY • Pursuant to the Public Finance Act, the Urgent Measures to Ensure the Stability of the Healthcare System Act, and the provisions of Article 30a of the Healthcare Services Act, public healthcare institutions, whose founder is the state, are required to ensure internal auditing and auditing of financial statements. During the implementation of these audits, and especially within the framework of financial statement audits, which are a novelty for audit firms and public healthcare institutions, numerous questions have arisen regarding the specifics of operations and accounting in public healthcare institutions. This is because their functioning and financing differ significantly from other public sector institutions in Slovenia. Due to the above, we aim to explain in this article the specifics of healthcare economics, the financing system of public healthcare institutions and, consequently, the accounting in such institutions.

Key words • economics, accounting, public healthcare institutions, healthcare economics, microeconomics, macroeconomics, healthcare services, financing, public

service, market activity, oversight, financial operations, investments, depreciation, internal audit, legislation

Matjaž Česen

Taksonomija EU

EU taxonomy

POVZETEK • Taksonomija EU, vzpostavljena z Uredbo 2020/852, določa merila za opredelitev okoljsko trajnostnih dejavnosti glede na šest okoljskih ciljev: blaženje in prilagajanje podnebnim spremembam, varstvo vodnih virov, krožno gospodarstvo, preprečevanje onesnaževanja in varstvo biotske raznovrstnosti. Za skladnost mora dejavnost znatno prispevati k vsaj enemu cilju, ne sme bistveno škodovati drugim in mora izpolnjevati minimalne socialne varovalke. Taksonomija EU omogoča primerljivost podjetij glede okoljske trajnostnosti in spodbuja trajnostne naložbe. Taksonomija EU loči med gospodarskimi dejavnostmi, ki so taksonomsko sprejemljive ali taksonomsko usklajene. Po uredbi morajo podjetja poročati o treh kazalnikih uspešnosti v obliki deležev v: prihodkih, naložbah v osnovna sredstva in naložbah v obratna sredstva.

Taksonomija EU je poleg analize trenutnega stanja pomembna za usmerjanje načrtov podjetij, za pritegnitev vlagateljev, za EU in države pri pripravi finančnih produktov ter politik. Analiza poročanja kaže, da večina podjetij že poroča o skladnosti s taksonomijo, vendar bo treba taksonomsko usklajenost še izboljšati. Poleg tega se podjetja srečujejo z izzivi pri zbiranju podatkov in kompleksnem poročanju ključnih kazalnikov, interpretaciji zakonodaje, doseganju tehničnih meril ter negotovosti pri minimalnih socialnih varovalkah. V prihodnje se bo obseg dejavnosti povečal, spremenila se bodo tehnična merila, poleg tega se bo obveznost poročanja razširila še na nekatera srednja in mala podjetja.

Ključne besede • trajnostne finance, taksonomija EU, sistem klasifikacije

SUMMARY • The EU taxonomy, established by Regulation 2020/852, sets out criteria for defining environmentally sustainable activities based on six environmental objectives: mitigation and adaptation to climate change, protection of water resources, circular economy, pollution prevention, and protection of biodiversity. For compliance, an activity must substantially contribute to at least one objective, not significantly harm others, and meet minimum social safeguards. The EU taxonomy facilitates comparability among companies regarding environmental sustainability and encourages sustainable investments. The EU taxonomy distinguishes between economic activities that are taxonomy-eligible and those that are taxonomy-aligned. Under the regulation, companies must report on three performance indicators as shares in: turnover, CapEX and OpEX.

In addition to analysing the current state, the EU taxonomy is important for guiding companies' plans, attracting investors, and assisting the EU and countries in developing financial products and policies. Analysis of companies reporting show

that most companies are already reporting compliance with the taxonomy, but improvements in taxonomy alignment are still needed. Companies have challenges related to data collection, complex KPI disclosure template, legislation interpretation, meeting technical screening criteria and minimum social safeguards. In the future, the scope of activities will expand, technical criteria will change, and reporting will also apply to certain medium and small enterprises.

Key words • *sustainable finance, EU taxonomy, classification system*

Mark Jo Moggi

Pravni vidiki CSRD: kontekst, prenos v slovensko pravo in skladno poročanje o trajnostnosti (1. del)

Legal Aspects of CSRD: Context, Transposition into Slovenian law and Compliant Sustainability Reporting (Part 1)

POVZETEK • Direktiva EU o poročanju podjetij o trajnostnosti (t. i. CSRD) prinaša povsem novo obveznost poročanja o trajnostnosti, zasnovanega kot obsežen, standardiziran in digitalen sestavni del poslovnega poročila, ki je predmet zunanjega pregleda in posla dajanja zagotovila neodvisnega revizorja. Krog zavezancev in vsebina poročanja po CSRD sta široka, učinki direktive mestoma presegajo meje EU-ja, začetek uporabe novih pravil pa je pred vrati. Zato sta priprava in usklajitev z novimi obveznostmi poročanja o trajnostnosti za predvidene zavezanke precejšen izziv. Namen prispevka v dveh delih je doprinesti k razumevanju: (a) širšega konteksta novih pravil CSRD in (b) natančnega obsega poglavitnih obveznosti poročanja o trajnostnosti v slovenskem pravu. V prvem delu prispevka je najprej povzeta vloga CSRD v trajnostnem finančnem sistemu EU-ja, vključno z bistvenimi povezavami te direktive z Uredbo o taksonomiji in SFDR. Sledi splošno pojasnilo prenosa CSRD v slovensko zakonodajo z novelami ZGD-1M, ZTFI-1C in ZRev-2C. Nato preidemo k podrobni obravnavi prvega elementa pravno skladnega poročanja o trajnostnosti, in sicer presoje, ali je izbrani subjekt zavezanec po pravilih CSRD, kot so prenesena v slovensko zakonodajo. Obravnava preostalih elementov sledi v drugem delu prispevka v naslednji številki SIR*IUS-a.

Ključne besede • CSRD, poročanje o trajnostnosti, ESRS, ESG, evropski zeleni dogovor, Uredba o taksonomiji, SFDR, dajanje zagotovil

SUMMARY • The Corporate Sustainability Reporting Directive (CSRD) introduces a completely new sustainability reporting obligation, designed as a comprehensive, standardized, and digital integral part of the management report which is subject to external review and assurance by an independent auditor. The range of obliged subjects and the scope of reporting under the CSRD are wide, its effects extend beyond the EU borders, the start of application of the new rules is imminent. Preparing for and complying with the new rules on reporting thus represents a significant challenge for in-scope entities. This two-part paper aims to contribute to the understanding of (a) the broader context of the new CSRD rules and of (b) the precise scope of the main sustainability reporting obligations under Slovenian law. This Part I of the paper starts with a summary of the role of the CSRD in the

*EU sustainable finance system and of its links to the Taxonomy Regulation and the SFDR. This is followed by an overview of the transposition of the CSRD into Slovenian law with the amendment acts ZGD-1M, ZTFI-1C and ZRev-2C. We then turn to a detailed discussion of the first element of legally compliant sustainability reporting, namely the assessment of whether a particular entity lies within the scope of the CSRD rules as provided in the Slovenian legislation. The remaining elements will be discussed in Part 2 of the article in the next issue of SIR*IUS.*

Key words • CSRD, sustainability reporting, ESRS, ESG, European Green Deal, Taxonomy Regulation, SFDR, assurance

Laura Skledar, Daniel Zdolšek

Nerevizijske storitve in kakovost revidiranja

Non-audit services and audit quality

POVZETEK • V prispevku po zgledu tuje literature opredeljujemo nerevizijske storitve v ožjem smislu kot storitve, ki niso revizija računovodskih izkazov. Gre za storitve, ki vključujejo druge storitve dajanja zagotovil, svetovalne, davčne in druge storitve, ki jih opravlja revizor oziroma revizijska družba. Pri opravljanju nerevizijskih storitev morata biti revizor in revizijska družba pozorna, da ni ogrožena revizorjeva neodvisnost. Evropska unija je z Uredbo EU 537/2014 opredelila prepovedane nerevizijske storitve, kadar gre za revizije pri subjektih javnega interesa. Slovenija je leta 2019 dodatno sprejela nov Pravilnik o prepovedanih nerevizijskih storitvah revizijskih družb, ki se nanaša predvsem na revizije pri subjektih, ki niso subjekti javnega interesa. Opravljanje nerevizijskih storitev namreč lahko postavlja revizorje v težaven položaj, v katerem je zaradi opravljanja nerevizijskih storitev ogrožena njihova neodvisnost. Pretekle raziskave sicer kažejo, da imajo nerevizijske storitve poleg negativnega lahko tudi pozitiven vpliv na kakovost revidiranja.

Ključne besede • revidiranje, revizija računovodskih izkazov, nerevizijske storitve, kakovost revidiranja, neodvisnost revizorja

SUMMARY • In our paper, following previous research, we define non-audit services as services that are not an audit of financial statements. These services include other assurance engagements, advisory, tax and other services provided by an auditor or an audit firm. When providing non-audit services, the audit firm and the auditor should be careful not to impair the auditor's independence. With Regulation EU 537/2014, the European Union has prohibited non-audit services when performing audits of public interest entities. In 2019, Slovenia additionally adopted new Rules on Prohibited Non-Audit Services of Audit Firms, which primarily refer to audits of non-public interest entities. Performing non-audit services may place auditors in a difficult situation where their independence may be impaired because of performing non-audit services. However, past research shows that conducting non-audit services can have a positive effect on audit quality in addition to a negative effect.

Key words • auditing, financial statements audit, non-audit services, audit quality, auditor independence

dr. Daniel Zdolšek, dr. Peter Podgorelec

Notranja revizija in področje upravljanja notranje revizije po novih Standardih GIAS

Internal audit and the domain of governing the internal audit function in the new GIAS

POVZETEK • Notranja revizija v Sloveniji mora najprej slediti zahtevam v Zakonu o gospodarskih družbah (ZGD-1) in drugih pravnih predpisih. Nato pa sledi pravilom notranjerevizijske stroke, kot so na primer novi Globalni standardi notranjega revidiranja (GIAS). Ti standardi predvsem na tretjem področju – upravljanje notranje revizije – določajo zahteve glede obveznih praks ter običajna in prednostna ravnanja pri izvrševanju teh zahtev. Pravila oziroma standardi stroke ne morejo predpisati pristojnosti organoma vodenja in nadzora v gospodarski družbi, vendar imajo odločilno vlogo pri interpretaciji pravnih standardov, kot je standard vestnega in poštenega gospodarstvenika. Standarde GIAS je treba po vsebini razlagati tako, da ko opredeljujejo dejavnosti t. i. boarda, jih v enotirnem sistemu upravljanja opredeljujejo za upravni odbor. Za dvotirni sistem upravljanja pa je potreben premislek. Analiza pokaže, da namen novih Globalnih standardov notranjega revidiranja ni omejiti njihovo uporabo le na razmerje med notranjo revizijo in upravo, sploh pa ne, kadar je razmerje med nadzornim svetom in notranjo revizijo vzpostavljeno, kot to velja za Slovenijo. Zato se besedilo Standardov GIAS interpretira tako, da načeloma sicer velja, da je board nadzorni svet in senior management uprava, vendar pa je treba pri vsaki alineji standardov, ki določa zahteve in ravnanja boarda, predhodno preveriti, ali so te združljive z zakonskim položajem nadzornega sveta. Prispevek zato vključuje tudi premislek o možnih predlogih, kaj narediti v Sloveniji pri urejanju razmerja med notranjim revizorjem in nadzornim svetom na ravni pravil notranjerevizijske stroke.

Ključne besede • GIAS, standardi, pravila notranjega revidiranja, notranja revizija, notranje revidiranje, ZGD-1, upravljanje, skladnost

SUMMARY • Internal auditing in Slovenia must first act in accordance with the Companies Act (ZGD-1) and other legal provisions. Then, the rules of the internal audit profession are followed, such as the new Global Internal Audit Standards (GIAS). In their third domain (Governing the Internal Audit Function), these standards list the required activities for the board, and the usual and preferred practices. The profession's rules or standards cannot determine the authorities (activities) of management and supervisory bodies in a company, but play a decisive role in

the interpretation of legal standards such as the standard of conscientious and honest businessman. In terms of their content, the GIAS should be interpreted as follows: when determining the activities of the board, this term means the board of directors in a one-tier governance system. In a two-tier governance system, their interpretation, however, requires special consideration. Our analysis shows that the purpose of the new GIAS is not to limit their use to the sole relationship between internal audit and senior management. Especially not in situations where the relationship between the supervisory board and internal audit has been established, as is the case in Slovenia. Therefore, the GIAS shall be interpreted in such a way that, in principle, it is true that the 'board' stands for the supervisory board and the 'senior management' for the executive management. However, for each sentence in the standards, which specifies the requirements and activities of the 'board', it is necessary to reconsider in advance, whether these are compatible with the statutory position of the supervisory board. Our paper, therefore, also considers possible proposals for what to do in Slovenia to regulate the relationship between the internal auditor and the supervisory board at the level of the rules of the internal audit profession.

Key words • GIAS, standards, internal auditing pronouncements, internal audit, internal auditing, Companies Act (ZGD-1), governance, conformance